

July 9, 2014

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street Suite 400
San Francisco, CA 94104-4606

RE: Proposed Ballot Language- Retirement Board Governance

Dear Gregg:

I am in receipt of your letter dated July 8, 2014, related to Retirement Board Governance. We have provided the POA with various drafts of the ballot measure since June 5, 2014. You indicated that the POA has sent two other letters on the subject and that the City has not responded. On the contrary, the City responded on June 4, 2014 (enclosed). In our response, we clearly stated that the City acknowledges that some aspects of the ballot measure *at that time* were likely subject to meet and confer. In addition, the City offered the POA dates and times to meet to discuss further.

Your letter dated July 8, 2014, does not identify any specific negotiable impact of the proposed Charter language. In fact, all of the concerns you have raised involve language which is consistent with current law or practice and none of them represent a change from the status quo. We address your concerns individually below.

First, you stated that the POA objects to Sections 810(a) and 810(b) because of the POA's belief that this gives the City the potential power to amend the current two retirement boards' structure, and, separately, to dilute the current POA representation on the existing Police and Fire Retirement Board. The draft ballot measure indicates that the City Council by ordinance shall establish one or more boards. The Council already has the authority to establish retirement boards and has created two such boards. The proposed Charter language would not change the status quo. The two existing retirement boards would remain in place under the Charter. If in the future there are further discussions regarding combining the boards into one board, this would be discussed with all stakeholders, including the unions, and established by ordinance. To the extent that there is a meet and confer obligation over such changes, it would exist at that time. In addition, to the extent the POA's concern involves the language that the City Council would appoint the majority of the board, this is also not a change in the status quo. In fact, the City Council currently appoints *all* board members.

Lastly, you suggested that the following language be added, "To the extent there is any conflict between this section and Article 17 of the California Constitution, then the Constitution will control." We wanted to make sure that you were aware of the San Jose Municipal Code Section 3.36.540 which states that the

City Charter and Municipal Code shall be interpreted consistent with the California Constitution and the Pension Protection Act.

In summary, the concerns you have raised are not changes to the current authority or practice. If you believe that we are misinterpreting your concerns, we request that you provide us with additional information and we hope given the short time frame, you are able to do so quickly.

I am also in receipt of your letter dated July 9, 2014, filing a grievance. We will be responding separately to this letter.

Sincerely,



Alex Gurza
Deputy City Manager

c: Ed Shikada, City Manager
Rick Doyle, City Attorney
Jennifer Schembri, Deputy Director of Employee Relations
Jim Unland, President of POA
Sean Kaldor, Chair of Police and Fire Department Retirement Board
Police and Fire Retirement Board
Harvey L. Leiderman, Esq. Reed Smith LLP

Enclosure

SENT VIA EMAIL

June 4, 2014

Gregg McLean Adam
Carrol, Burdick & McDonough, LLP
44 Montgomery Street
Suite 400
San Francisco, CA 94104

RE: Proposed Retirement Board Governance Changes

Dear Gregg:

We are in receipt of your letter sent June 3, 2014, and your letter dated May 14, 2014.

As I mentioned to you verbally on May 21, 2014, and when the 1999 Tentative Agreement regarding retirement board structure and composition was raised by the POA in 2008, the City having met and conferred over a non-mandatory subject of bargaining does not transform the issue into a mandatory subject of bargaining. However, we will engage the POA and the other stakeholders on all matters of the proposed retirement board governance changes.

The City does acknowledge that some aspects of the proposed changes in board governance are likely subject to meet and confer, such as the proposed change regarding minimum qualifications for the appointed employee members.


The City does have meet and confer obligations with the bargaining units that represent employees who work in the Department of Retirement Services as the changes relate to their working conditions and benefits. We do not believe that those changes are subject to meet and confer with bargaining units that do not represent any employees in the Department of Retirement Services.

We look forward to discussing these issues with you. We have provided alternative dates and times below.

Date	Time	Location
June 6, 2014	12:30 pm – 1:30 pm	OER Conference Room
June 10, 2014	3:00 pm – 4:00 pm	OER Conference Room

Please let us know if you will be able to meet with us on either or both of these dates.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex Gurza', with a long horizontal flourish extending to the right.

Alex Gurza
Deputy City Manager

c: Jennifer Schembri, Deputy Director of Employee Relations
Jim Unland, POA President